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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD DOE,
Plaintiff,

vs.

KENNETH D. KYLER, JOHN A. PALAKOVICH, LT. WILLIAM J. RHOADES, MARION L. DRAGOVICH, OFFICER RUBENDALL and OFFICER RAGER,
Defendants.

CIVIL NUMBER: 1:CV-00-0315

TYPE OF PLEADING: PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT

FILED ON BEHALF OF:
JOHN RICHARD DOE,
Plaintiff and Pro Se Counsel

NAME, ADDRESS AND TELEPHONE OF:

☐ Counsel of Record
☒ Individual, if Pro Se

MR. JOHN RICHARD DOE,
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SCI- Greene/SMU
175 Progress Drive
Waynesburg, PA. 15370-8089

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COUNTER STATEMENT OF THE CASE

On or About January 6, 2000, Plaintiff John Richard Dye, a Pennsyl
State Prisoner, then confined at SCI-Camp Hill RHU, filed his 42 U.S.C. §1983
Rights Complaint Filed in State Court - State Civil Action - At Law
Court of Common Pleas of Cumberland County, at No. 00-0057 Civil T

This Complaint named as Party Defendants, Kenneth Kyler, the F
Superintendent of SCI-Camp Hill, John A. Palakovich, the Deputy Superin
For Facilities Management at SCI-Camp Hill and Lt. W. Rhodes, SCI-
Hill Restricted Housing Unit ("RHU") Lieutenant/Unit Manager.

On or About February 7, 2000, Plaintiff filed an Amended Comp
adding Martin L. Dragovich, the new SCI-Camp Hill Superintenden
a Party Defendant to this Civil Rights Action.

In his Complaint and Amended Complaint, herein, the Plai
alleged that the Defendants violated the law of his Rights under th
Eighth and Fourteenth Amendments of the United States Constitution, a
under various provisions of the Pennsylvania State Constitution an
policies. By way of Relief, the Complaint and Amended Complain
Declaratory Relief, Compensatory and Punitive Damages, Plaint
Costs, Filing Fees & Service Fees for this Civil Action, Injunctiv
A Trial By A Jury and Such Other and Further Relief As This Court Deems J
& Equitable, Herein.

Defendants removed this Civil Rights Action to this Federal Court on Febr

On July 17, 2000, this Court granted Plaintiff leave to file A Supplem
herein this case, adding Correctional Officers Rubendall Brager, the SCI-
Property Officers, as Party Defendants to this Civil Rights Action & u
Facts Regarding, inter alia, the denial of Plaintiff's access to his legal
materials and requesting the same Relief as above-stated.

On October 17, 2000, Defendants, by counsel, filed their motion for summ
and Statement of Undisputed Facts, herein, and on December 5, 2000,
Memorandum and Documents in Support of Motion For Summary Judgment

This is the Plaintiff's Brief in Opposition to Defend

COUNTER STATEMENT OF THE QUESTIONS PRESENTED

I- ARE THE DEFENDANTS ENTITLED TO JUDGMENT AS A MATTER OF LAW HEREIN THIS CASE, OR, MUST THEIR MOTION FOR SUMMARY JUDGMENT BE DENIED, WITH PREJUDICE?

Suggested Answer: No, Yes.

II- HAS PLAINTIFF FAILED TO EXHAUST HIS "AVAILABLE" ADMINISTRATIVE REMEDIES?

Suggested Answer: No

III- HAS PLAINTIFF FAILED TO ESTABLISH CLAIMS UPON WHICH RELIEF CAN BE GRANTED?

Suggested Answer: No

IV- ARE PLAINTIFF'S STATE LAW CLAIMS BARRED BY THE ELEVENTH AMENDMENT AND STATE LAW SOVEREIGN IMMUNITY?

Suggested Answer: No

SUMMARY OF THE ARGUMENT/STANDARD OF REVIEW

Plaintiff John Richard Bee notes at the outset here, that Bracey v. Herringa, 466 F.2d 702 (6th Cir. 1972), the U.S. Court of Appeals, the Seventh Circuit, stated & held:

> There obviously exists a serious initial question of whether the summary judgment procedure should ever be employed against an incarcerated party, particularly against one held in solitary confinement in view of the language of Fed. R. Civ. P. 56(f). (Bracey, 466 F.2d at 703).

Furthermore, the U.S. Court of Appeals in Bracey, concluded:

> We conclude that it was error for the district court to accept in support of the defendants motion for summary judgment a record which included the self-serving statements of the defendants themselves as well as statements of other prison guards whose subject to possible Civil Rights Act liability. This kind of record lacks reliability and trustworthiness. (Bracey, 466 F.2d at 705).

See also Romano v. Howarth, 998 F.2d 101 (2d Cir. 1993).

The Seventh Circuit's above Bracey decision was based upon In Hoffman v. Palmer, 129 F.2d 976 (2d Cir. 1942), United States v. [illegible] 698, 700 (6th Cir. 1987) and Yates v. Blair Transport, Inc., 249 F. Supp. 6 1965) (where Reporters are ordinarily excluded when offered by the party they were made).

The Seventh Circuit's above-Bracey decision was also based upon the [illegible] Fed. R. Civ. P. 56(f).

Fed. R. Civ. P. 56(f) states:

> Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the Court may refuse the application for judgment.

Furthermore, the notes of the advisory committee on the 1987 Amendment [illegible] Judgment may be inappropriate where the party opposing it shows under that he cannot at the time present facts essential to justify his opp be argued that a prisoner by virtue of his status shows that he cannot pres to justify his opposition." See n-1, of Bracey above.

Herein this instant Civil Rights Action of this Plaintiff's, like in Bracey Defendants' self-serving arguments & their unsworn evidence which t of their Motion For Summary Judgment, herein, are unreliable & lack trustworthines [illegible]

opposition To Defendants' Motion For Summary Judgment And Memorandum
support, "Ex" confined in a prison lockdown/segregation unit, In View of the language of Fed. R.
See also Fed. R. Evid. Rules 803(6) & 803(8).
Plaintiff furthermore avers & submits that the Relevant part of Fed. R. Civ. P. 56(c) p

"The Judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to Judgment as a matter of law."

Herein this instant case, the pleadings, answers to interrogatories admissions on file, all show that there remains immense genuine issues of material facts & that the Defendants (the moving parties) are not entitled to Judgment as a

The rule further provides that "When a motion for summary Judgment is made supported as provided in this rule, an adverse party may not rest upon the mere allegations the adverse party's pleading, but the adverse party's response, by affidavits or otherwise provided in this rule, must set forth specific facts showing that genuine issue for trial. If the adverse party does not so respond, summary if appropriate, shall be entered against the adverse party.

In a trilogy of cases, the Supreme Court provided the standards Judgment. In Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 (1986), the Court emphasized that the non-moving party must come forw specific facts showing a genuine issue of fact for trial. In Cel Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986), the Court clarified the the moving and the non-moving parties.

And finally in Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (198 defined what constitutes a genuine issue of fact precluding summary

The party moving for summary Judgment has the initial burden of to the district court that there is an absence of evidence to support party's claims. It need not support its motion with affidavits or materials that negate the opposing party's claims. Celotex, supra; Country Gepner, 930 F.2d 1056, 1061 (3d Cir. 1991). Further, Rule 56 enables a party there is no genuine dispute as to a specific essential fact to demand at averment of that fact before the lengthy process of litigation continues." Schoc Fidelity Bank Corporation, 912 F.2d 654, 657 (3d Cir. 1990), quoting, Lujan v. Nati

affirmative evidence, that is evidence which amounts to more than scintilla but less than a preponderence, which supports each element of claim to defeat a properly presented motion for summary judgment. Will v. West Chester, 891 F.2d 458, 461 (3d Cir. 1989). See also Anderson Liberty Lobby, Inc., 477 U.S. at 256. He must go beyond the pleadings & show specific facts by affidavit or by information contained in the file (i.e., depositions, answers to interrog & admissions) Country Floors Inc. v. Gepner, 930 F.2d 1056, 1061 (3d herein this case sub judice, this Plaintiff has met his burden of proving elements essential to his claims. Celotex, supra, 477 U.S. at 322.

A material fact is a fact whose resolution will affect the outcome case under applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. (1986).

Although the court must resolve any doubts as to the existence of issues of fact against the party making for summary judgment, Rule not allow a party resisting the motion to rely merely upon bare asser conclusory allegations or suspicions." Fireman's Ins. Co. v. DuFre F.2d 965, 969 (3d Cir. 1982).

Summary judgment is only precluded "if the dispute about a ma fact is 'genuine,' that is if the evidence is such that a reasonable jury a verdict for the non-moving party." Anderson, 477 U.S. at 247-248. this case sub judice, while the Defendants have "not" clearly met the Plaintiff clearly "has" met his burden.

Furthermore, in Eadbury v. Wainwright, 718 F.2d 1538 (1983), the Court h

> This Court has repeatedly said that even if the parties agree on the basic facts, summary judgment may be inappropriate if the parties "disagree about the factual inferences that should be drawn from these facts." Warrior Tombigbee Transportation Co. v. M/V Nan Fung, 695 F.2d at 1296; Clemons v. Dougherty County, Ga., 684 F.2d at 1369; Environmental Defense Co. v. Continental Insurance Co., 420 F.2d 1211, 1213 (5th Cir. 1969); NLRB v. Smith Industries, Inc., 403 F.2d 889, 893 (5th Cir. 1968); Keating v. Jones Development of Mississippi, Inc., 398 F.2d 1011, 1013 (5th Cir. 1968). Put another way, "if reasonable minds might differ on the inferences arising from undisputed facts, then the court should deny summary judgment." Clark v. United Mutual Life Insurance Co., 692 F.2d 1370, 1372 (11th Cir. 1982); Clemons v. Dougherty County, Ga., 684 F.2d at 1369; Impossible Electronics Techniques

No matter how enticing it (summary judgment) cannot sha
circuit a trial by a judge or jury of fact questions if they are reall
in the case. See Bros, Inc. v. W.E. Grace Mfg. Co., 261 Fed 428 (4
(5th Cir. 1958).

Summary judgment must be used sparingly since its prophylact
function, when exercised, cuts off a party's right to present its case to
jury. See Edelstein v. State Univ. College at Geneseo, 535 F. 2d 752 (2d

Since the impact of a successful Rule 56 motion is rather dra
summary judgment must be used with a due regard for its purp
and should be cautiously invoked so that no person will b
improperly deprived a trial of disputed factual issues. As
by the Tenth Circuit in Aunick v. Rockmont Envelope Company, 158
568 (10th Cir. 1946); "The power to pierce the flimsy and trans
factual veil should be temperately and cautiously used lest abuse frap

Here in this civil rights action sub judice the award of summ
to the Defendants, would clearly and improperly short circuit this
right to a trial by a jury, his right to present his case to
and deprive him of a trial of disputed factual issues and, th
judgment must be denied to the Defendants, herein this
case, as a matter of law.

Plaintiff furthermore avers & submits that, a materia
one whose resolution will effect the outcome of the case, a
is central to an element of a claim or defense.

Furthermore, a related issue concerns the nature of the
the evidentiary and factual conflict is direct, summary judgm
denied absent the rare instance where the court may di
witness or source. For example, where the plaintiff in an automobil
swears the stoplight was green in his favor while the defendant
green in her favor, they have presented direct evidence

conflicting direct evidence and summary judgment is unavailable.

Here, in this case sub judice, where the Defendants claim the genuine material facts show that plaintiff has failed to show that he was actually injured by Defendants denying him his personal law books & legal materials and by their actions in not returning his legal materials to him and thus he was not denied his right to access the courts, from November, 1999, to April 17, 2000, plaintiff was allowed to have a box of legal materials in his cell plus a personal bible, koran or equivalent publication (Livingood Dec., ¶1, Ex. 4, VI, D, 5); that other materials were stored and maintain by the property officer (id.); that even though he may not have had other basis (id.); that, even though he may not have had other [illegible] and they were available to plaintiff on an exchange basis (id.); that, even though he may not have had other religious materials he did not suffer a violation of his First Amendment right; that, there records show that at the end of April, 2000 materials were removed from his cell because he attempted suicide by stapling (supplemental complaint, ¶ 9); some of his materials were returned before the month ended while others were returned in early May (Livingood Dec., ¶ 7, Ex. 2); that in light of the circumstances, the relatively brief deprivation of his materials is de minimis First Amendment violation and that plaintiff failed to exhaust his administrative remedies by filing an Inmate Grievance as to his issues of dental shower and w/the exception placing of the plexiglass shield on his cell door prior to bringing this Action and therefore must be dismissed as a result; the plaintiff claims that he was denied his [illegible] soft cover law books/legal materials from November 26, 1999 — February 8, 2000, and personal religious books/materials from November 26, 1999 — January 30, 2000, (Doc. #201, VI-D, 5, and DC-ADM #801, 2, allowed him to have one (1) record center box of legal materials during the relevant time period of November 26, 1999, — February 8, 2000, November 26, 1999 — January 30, 2000, but that the Defendants violated such policies and denied him law books and other religious books/materials, that such law books were necessary for his legal pleadings in his court cases and that such other religious materials/books were necessary to enable him to have religious study and devotional time and that without such he could not adequately do so; that, the Defendant Property Officers did not timely forward by the Medical Director and Psychiatrist, the Superintendent & the Deputy Superintendent to return his legal, religious & other property to him; that he did not attempt to file a grievance his claims of the defendants denials of his religious materials, shower, suicide exception placing of the plexiglass shield over his cell door/excessive heat/poor ventilation, but that he was prevented from doing so by the Prison Grievance Coordinator; that, he was not yelling/disrupting November 21, 1999, and that all Defendants herein have failed to follow and abide by mandatory DOC

For summary judgment must be denied, with prejudice herein, for
such would be contrary to the controlling federal law & a violation of
such. Furthermore, the Plaintiff avers & submits that even if a court
feels that summary judgment in a given case is technically pro-
judicial policy and the proper exercise of judicial discretion may prompt
the motion and permit the case to be fully developed at trial, as the
rights of the movant can always be protected in the course of an even
trial. See 10 C. Wright, A. Kane, Federal Practice and Procedure, sections

Furthermore, the United States Supreme Court has cautioned that
Judgment not become a trial by affidavit and that "credibility determin-
weighing of evidence, and the drawing of legitimate inferences from
facts are jury functions, not those of a judge. . . . The evidence of
movant is to be believed, and all justifiable inferences are to be
favor." See Anderson v. Liberty Lobby, Inc. 477 U.S. at pages, 106 S.
91 L.Ed.2d 202 (1986). Other federal courts have held the same. See
779 F.2d 67 (7th Cir. 1985) (credibility is not an issue to be determined by
Judgment); Wilson v. Williams, 997 F.2d 345, 350-51 (7th Cir. 1993);
925 F.2d 90, 95 (4th Cir. 1991); Thanh v. Adkman, 893 F.2d 145, 147 (7th Cir. 199
supposed to decide disputed facts on a basis of credibility on a
motion). See also Dickerson v. U.S. Steel Corp., 439 F. Supp. 55, 62 (D.
considering motion for summary judgment, court may not resolve issue
credibility or fact, and if material fact issues are in dispute sum
is not appropriate). Wehrle v. Beeks, 264 F. Supp. 65 (D.C.N.C. 1966), at
288 (in determining motion for summary judgment, district judge can
find facts in sense of resolving questions of credibility or conflicting testi

Plaintiff furthermore avers & submits that, the court, in determining whether
genuine issue of material fact must view all facts and all reasonable inferences
non-moving party. See Matsushita Electric Industrial Co., Ltd. v. Zenith R
S.Ct. 1348 (1986); Hathaway v. Coughlin, 841 F.2d 48, 50 (
Smith v. Maschner, 899 F.2d 940, 949 (10th Cir. 1990). See also Hartman v.
831, 832-833 (D.V.I. 1967) ("In any act for summary judgment is
function to determine disputed issues of fact. Though the court may feel
with a view of the facts than the other, it is clear that as long as there
issue of fact, summary

law; - the court will deny summary judgment.

Herein this case sub judice, the facts at issue are genu
facts, which are in dispute and on which a reasonable jury could ret
verdict in favor of the non-moving party (the plaintiff herein), given
is stated & set forth, herein this Brief, at 1-17, supra, the other pla
this case, the Defendants' Answers to Plaintiff's first and seco
Interrogatories, the Admissions on file, Plaintiff's Initial/Am
Supplemental Complaints, the Affidavit of Plaintiff John RICHAR
Plaintiff's Statement of Disputed Factual Issues, & Plaintiff's
in the accompanying Appendix of Exhibits, the Defendants are
entitled to judgment as a matter of law herein this instant civil
Action, and that Defendants' Motion for Summary Judgment
be denied, with prejudice, as a matter of law herein this instan

Furthermore, plaintiff avers & submits that, because Defendants Kyle
Rhoades, Dragovich, Rubendall & Rager, by their answers & other pleadings herein t
denied 99% of the factual averments/allegations of this Plaintiff's Initial, Am
Supplemental Complaints, herein, they have created a genuine issue of fac
facts herein, thus precluding any award of summary judgment to
and this Court, as a matter of law, must deny, with prejudice, them's Mo
summary judgment, herein this case.

The language of Rule 56(c) of the Federal Rules of Civil Pro
clear, that the only time a summary judgment award is a
when there is a showing that there is no genuine issue as t
fact and that the moving party is entitled to judgment as a matter of l
showing is "not" present herein this instant civil rights
thus, the Court may not award summary judgment to the Defend a

In determining a motion for summary judgment, courts use a t
process. First, and foremost, the Courts must determine whether
disputed facts which present a genuine issue of material fact
if the facts are disputed and present a genuine issue of materi
trial, the Court's inquiry must stop right then & there & the Court "m
the moving party's motion for summary judgment. Only if the Court

Judge is frequently tempted in these days of crowded dockets to dispose of a case summarily if he feels that the party opposing a motion for summary judgment cannot prevail legally upon trial, the Federal courts have cautioned that a district judge in order to dispose of a case summarily should not make the case hard by deciding a difficult or doubtful question of law that might not survive factual determinations. Robert Johnson Grain Co. v. Chemical Interchange Co., 5 207, 211 (8th Cir. 1979); Roberts v. Browning d/b/a Browning, Inc., 6 F.2d 528, 536 (8th Cir. 1979). (Olberding v. U.S. Dept. of Defense, Dept. of the Army, (D.C. Iowa 1983), 564 F.Supp. 907, affirmed 709 F.2d

In ruling on motion for summary judgment, district court must n resolve factual disputes by weighing conflicting evidence since it is provence of jury to assess probative value of evidence. Toney v. Kawas Heavy Industries, Ltd., (S.D. Miss. 1991), 763 F. Supp. 1356.

Summary judgment is not to be used as a substitute for trial but only when it is quite clear what the truth is and that no genuine issue of fact remains for trial. In re Coordinated Pre-Trial Proceedings i Antibiotic Antitrust Actions, (C.A. Minn. 1976), 538 F.2d 189, certiorari denied, 97 S.Ct. 738, 429 U.S. 1040, 50 L.Ed. 2d 751.

Summary Judgment should not be used as substitute for trial on facts and law, especially where parties are entitled to trial by jury, and more fact that trial judge believes that plaintiff cannot win lawsuit before jury does not endow him with authority to take place of jury and decide hotly contested issues of fact. Cox v. English-American Underwriters (CA. Cal. 1957), 245 F.2d 330.

Summary Judgment is lethal weapon and courts must be mindful of its aims and targets and be aware of overkill in its use. Brunswick Corp. v. Vineberg, (C.A. Fla. 1967), 370 F.2d 605.

Summary judgment is drastic remedy which should be granted only when it is clear that requirements of this rule have been satisfied. Auletta v. Tully, (D.C.N.Y. 1983), 576 F. Supp. 191, affirmed 732 F.2d 1 142.

IN the case Slavin v. Curry, 574 F.2d 1256, 1260 (5th Cir. 1978) the U.S. Court of Appeals For The Fifth Circuit held & stated as follows: "The personal view of a Judge that the allegations of a pro se complaint are implausible (cannot) temper his duty to apprise such pleadings liberally."

In the case of Ferdick v. Bonzelet, 963 F.2d 1258 (9th Cir. 1992); the Ninth Circuit, held/stated as follows:

> Dismissal is harsh penalty, and should be imposed only in extreme circumstances.

In Taylor v. Gibson, 529 F.2d 707, 709 (5th Cir. 1976); the Court of Appeals for the Fifth Circuit, held/stated as follows:

> (J)udges must balance their misgivings and skepticism about the usual § 1983 prisoner suit against the cold knowledge that in certain instances injustices to prisoners occur in jails and prisons, some of which violate constitutional mandates . . . . (I)t is the responsibility of the courts to be sensitive to possible abuses in order to ensure that prisoner complaints, particularly pro se complaints, are not dismissed prematurely, however unlikely the set of facts postulated.

In Balistreri v. Pacifica Police Dept., 901 F.2d 696 (9th Cir. 1990 the Court of Appeals for the Ninth Circuit, held/stated as follows:

> There is obligation to construe pleadings liberally and to afford plaintiff benefit of any doubt in civil rights cases, where plaintiff is pro se also, pro se pleadings are to be held to a less stringent standard than pleadings drafted by attorneys.

Plaintiff furthermore avers & submits, that in Alabama Farm Bureau Mutual Casualty Company Inc., ect., v. American Fidelity Life Insurance Company, ect., et al., 606 F.2d 602 (5th Cir. 1976); the Court of Appeals for the Fifth Circuit, held/stated as follows:

> 'Cases in which the underlying issue is one of motivation, intent, or some other subjective fact are particularly inappropriate for summary judgment, as are those in which the issues turn on the credibility of the affiants.' Slavin v. Curry, 574 F.2d 1256, 1267 (5th Cir. 1978): quoting Conrad v. Delta Airlines, Inc., 494 F.2d 914, 918 (7th Cir. 1974). Summary Judgment may be improper even though the basic facts are undisputed, if the ultimate facts in question are to be inferred from them, and the parties disagree regarding the permissible inferences that can be drawn from the basic facts. Winter v. Highlands, 569 F.2d 87, 89 (5th Cir. 1978). (T)he choice between permissible inferences is for the trier of facts.' Nunez v. Superior Oil Co., 572 F.2d 857.862 (5th Cir. 1978) (quoting Walker v. U.S. Gypsum Co., 270 F.2d 857, 862 (5th Cir. 1959), Cert. denied 363 U.S. 805 80 S. Ct. 1240, 4 L. Ed.2d 1148 (1960).

> Where a jury is called for, the litigants are entitled to have the jury choose between conflicting inferences from basic facts. Nunez, 572 F.2d at 1124.

In Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct 2963 (1974); it was stated/held:

> Lawful imprisonment necessarily makes unavailable many rights and privileges of the ordinary citizen, a retraction justified by the considerations underlying our penal system." But though his rights may be diminished by the needs and exgencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the constitution and the prisons of the country. (Wolff, 418 U.S., at 555-56).

Plaintiff also avers & submits, that; "Summary Judgment must be used selectively to avoid trial by affidavit." See, Donohue v. Windsor Locks Board of Fire Com'rs, 834 F.2d 54 (2d Cir. 1987).

Also, in Adickes v. S.H. Kress & Co., 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed. 2d 142 (1970); the U.S. Supreme Court, held/stated as follows:

> Summary Judgment is a drastic remedy to be granted only where the requirement of Rule 56, Federal Rules of Civil Procedure have clearly been met. A motion for summary judgment does not entitle the court to try issues of fact. Its function is limited to deciding whether there are any such issues to be tried. In making that determination "it must resolve all ambiguities and draw all reasonable inferences in favor of the partyagainst whom summary judgment is sought. . .with the burden on the moving party to demonstrate the absence of any materid factual issue genuinely in dispute."

Also, one court at least, has questioned "whether the summary judgment procedure should ever be employed against an incarcerated party, ...in view of the language of Fed. R. Civ. P. 56 (f)."

See, Bracey v. Herringa, 466 F.2d 702 (7th Cir. 1972). See also, Hudson v. Hardy, 412 F.2d 1091, 1095 (D. C. Cir. 1968). Also, Loss of constitutional rights, even for short periods of time constitute irreparable injury. Elrod v. Burns, 427 U. S. 347, 96 S.Ct. 2673 (1976). Also see, Deerfield Medical Center v. City of Deerfield Beach, 661 F.2d 328 (5th Cir.

ARGUMENTS

I. DEFENDANTS ARE "NOT" ENTITLED TO JUDGMENT AS A MATTER OF LAW, HEREIN THIS CASE, AND THEIR MOTION FOR SUMMARY JUDGMENT MUST BE DENIED, WITH PREJUDICE.

A. Plaintiff's Claims Must "Not" Be Dismissed As He Has "Not" Failed To Exhaust His Available Administrative Remedies.

First of all, in response to what the Defendants' [argue] claim on p. 7, of their Memorandum In Support Of Motion For Summary Judgment,[4] Plaintiff avers & submits while it is true that under the Prison Litigation Reform Act of 1996, 110 Stat. 1321 (P.L. 104-[...] plaintiff must exhaust his available administrative remedies before he is permitted to bring an action [...] conditions of his confinement, based upon his following facts, arguments & citations of authorities [...] below & infra, at 23, it is "not" true that Plaintiff has failed to carry this burden nor that his claims must b[e ...]

Second of all, in reply to what the Defendants claim & argue on p. 8[9] of their Memorandum In Support of M[otion for] Summary Judgment,[6] Plaintiff avers & submits that he "did" file & pursue an Official Inmate [Grievance all] the way up to final review as to the issues of the denial(s) by Defendants, herein, of his law [...] materials, a fact which the Defendants "have" already admitted, herein this case,[7] & the Plaintiff [on December] 5, 1999, attempted to exhaust his available administrative remedies under DC-ADM #804, as to the [issues] of Defendants' denials of his religious materials, showers, yard/outside exercise & the placing of a [...] over his cell door/excessive heat/poor ventilation, by filing an Official Inmate Grievance concerning [...] those issues/claims,[8] however, Mr. Ben C. Livingood, the SCI-Camp Hill Grievance Coordinator, [in violation] of established written Pa. Prison Grievance Policy, refused to process & file such same Grievance & returned [it to] Plaintiff unprocessed on December 8, 1999, as he claimed erroneously that this was a PRC Matter,[9] however, DC-ADM 80[4 ...]

E. Exceptions
Initial review and appeal from initial review of issues related to the following Administrative Directives s[hall] be in accordance with procedures outlined therein, and will not be reviewed by the Grievance Officer or Grievance Coordinator [...]

2. DC-ADM-801 - Inmate Disciplinary and Restricted Housing Unit Procedures. See DC-ADM 804 [...]

and the Grievance on said issues which the Plaintiff filed on December 5, 1999, did "not" pertain to [issues that] [...] Furthermore there is no provision/procedure under DC-ADM #804, for refusing to process/file & [...] when the issues complained about therein said grievance are a PRC Matter, except as outlined therein [at] E.2., and thus, Mr. Livingood was wrong & violated this Policy when he refused to process/file & returned Plaintiff's [...] and, furthermore, in the Unsworn Declaration of Ben C. Livingood which the Defendants, herein, have su[bmitted in support] of their Motion For Summary Judgment, Mr. Livingood states, under penalty of perjury & based on persona[l knowledge]:

> Under the grievance system, inmates can submit grievances regarding any problem the[y experience] during the course of confinement, providing the problem is not already covered by another [...] or policy. For example, misconducts are covered by a separate policy and procedure.

Furthermore, this Plaintiff should "not" have had to exhaust his available a[dministrative] remedies for the denial of his religious materials/books, as it has long been held by the U[nited States] courts that those type of claims which are considered to be prison conditions claims, are those [...]

[4]/ See Defendants' Memorandum In Support of Motion For Summary Judgment, at 7.

[5]/ Defendants' Citation of the Prison Litigation Reform Act as being of 1995, is incorrect, as such Act was enact[ed ...]

[6]/ See Defendants' Memorandum In Support of Motion For Summary Judgment, at 8 - 9.

[7]/ See Defendants' Response to Plaintiff's First Set of Interrogatories, Answer to Interrogatory No. 25, attached as Plaintiff's [...] Appendix of Exhibits to Plaintiff's Brief in Opposition to Defendants' Motion For Summary Judgment And Memorand[um ...]

[8]/ See Plaintiff's Official Inmate Grievance dated December 5, 1999, in Plaintiff's Exhibit - J - attached [...]

[9]/ DC-ADM Form Rejection Letter dated December 8, 1999, signed by Ben C. Livingood, grievance coordinator, in Plaintiff's Exhibit [...] [...] Brief In Opposition To Defendants' [...]

brought & raised under the 8th Amendment of the United States Constitution, i.e., for example, claims of showers, excessive heat/poor ventilation, outside exercise/yard etc., and given such, these such as denial of legal and/or Religious books/materials, which can be brought only under the 14th Amendments of the United States Constitution, are "not" prison conditions claims & Exhaustion(s) is "not" applicable nor mandatory to such 1st Amendment U.S. Constitutional claim

Also this Plaintiff did file an official Inmate Grievance and take such appeal all the way up to Final complaining about when Defendants Ruberdall and Rager failed to return all of this Plaintiff's Religious Materials/Books, for over two weeks, which had been confiscated from Plaintiff's cell on April 24, 2000. (see Plaintiff's Exhibit - K - of the Appendix of Exhibits to Plaintiff's Brief In Opposition To Defendants' Motion For Summary Judgment And Memorandum In Support).

Besides all of this, the Plaintiff had on December 4, 5, 1999, done as Mr. Livingood, Grievance Coordinator, told him to do on December 8, 1999, addressed all of these same issues & claims to Defendant Deputy Superintendent Rankovich & the SCI-Camp Hill P.R.C., but to no avail, as nothing was done.

Plaintiff also avers & submits that, he also complained about all of such claims, as raised in his and Amended Complaints in this case, in writing, on an Inmate Request form sent to Defendant K. November 30, 1999, and, in writing, in a Letter sent to then Executive Deputy Secretary Dr. Beard, Pa. Department of Corrections, on November 30, 1999, (see Plaintiff's Exhibit - M - of his Appendix of Exhibits to Plaintiff's Brief In Opposition To Defendants' Motion For Summary Judgment And Memorandum & given that the SCI-Camp Hill Grievance Coordinator Ben C. Livingood refused to process Plaintiff's December 5, 1999, Grievance as to the issues/claims of defendants denial of Plaintiff materials/books, showers & outside exercise & as to the placing of the plexiglass shield on the cell door/excessive heat/poor ventilation, such illegally prevented this Plaintiff from exhausting available administrative remedies under DC-ADM 804, for such, through no fault of his rendering such administrative remedies "unavailable" to this Plaintiff for such, and, per Brennan, 219 F.3d 279 (3d Cir. 2000), our Third Circuit U.S. Court of Appeals, ruled & held:

> [3.] But we find Camp's second position persuasive. It will be recalled that (we similarly enough) under section 1997e(a) the prisoner need only exhaust such administrative remedies as are "available". From Camp's description of events at SCI-Albion, which defendants have not refuted in fact terms, he faced somewhat of a Catch-22 situation there - - - -
> - - - - This judicial consideration is now open to him. We affirm the district court's holding that excessive force claims are subject to the statutory exhaustion requirement. Having done so, we further hold that Camp has met that requirement and remand this case for reconsideration on the merits.

The facts & scenario here in this case sub judice, are similar to that in Camp, above, & thus, the ruling/holding applicable to & legally controlling in this Plaintiff's case here. Third of all, in the unsworn Declaration of Livingood, which the Defendants include in their Documents Supporting Defendants' Motion For Summary Judgment in this case, Mr. Livingood, states:

> "The grievance filed on March 24, 2000, did mention the plexiglass shield that had been placed on his cell door and complained about the ventilation - - - - Is/
> - - - - The plaintiff did not appeal that grievance - - 14/

and the Defendants also parrot & mention the above on page 5 of their Memorandum In Support of Judgment, however, the Plaintiff avers & submits that he disputes that such is true, as contrary to what Mr. states & claims as above, the Plaintiff did appeal such grievance No. CAM-0208-00 to Defendant Supt. Dragovich by following SCI-Camp Hill RHU outgoing Mail Policy, by placing such written grievance appeal on the bars to shift RHU officers to pick up & place in the RHU Request Mail Box to be picked up the next morning by the designated Hall Officer of such appeals of this Plaintiff's Cell Door Bars, but during this same time

I Mail and/or Request Boxes, as said officers were then illegally retaliating against t
for his past & present behavior and for his filing Grievances & Staff & thus, this Plaintiff
in the same situation, herein this case, as cam was in, in Camp v. Brennan, and thus, this
has "not" failed to exhaust his available administrative remedies and his Civil Rights Action must

B. Plaintiff Has "Not" Failed To Establish Claims For Which Relief Can Be Granted.

First of all, in Reply to what the Defendants argue & claim on p. 9 of their
In Support of Motion For Summary Judgment, Plaintiff avers & submits that, base
he states & argues & also upon the citations of authorities, herein, below & in Pltf's, a
his claims in this case do "not" fail in all respects as a matter of law and the Def
"not" entitled to Judgment as a matter of law, herein, & their claims & arguments "are" contrary to the
& other federal law or, at least, "are" contrary to the controlling state Law.

a. Showers, Exercise & Cell Conditions / Temperature / Ventilation.

Second of all, in Reply to what the Defendants argue & claim on p. 10, of their Memo
of Motion For Summary Judgment, Plaintiff avers & submits that, M.D. LR 28, of
the relevant part, states, that:

> Briefs shall contain complete citations of all authorities relied upon, including whenever practicable, citations both to official and unofficial reports. A copy of any unpublished opinion which is cited must accompany the brief as an attachment. - - - -

however, defendants, herein, fail to attach any copies of the unpublished opinions in De
Vaughn, 1996 W.L. 355398 (E.D. Pa. 1996) and in Briggs v. Heidelbaugh, 1997 WL 318081 (E.D.
they rely upon, herein, in support of their argument that "the interment denial d
does not violate the Eighth Amendment," & thus, the Defendants, herein, have clearly v
LR 7.8, of this Court and therefore, they may "not" use "nor" rely upon DeFellippo v. Vaughn, supra
1996) "nor" Briggs v. Heidelbaugh, 1997 W.L. 318081 (E.D. Pa. 1997), herein, "nor" may this Ca
consider "nor" rely upon the decisions therein such unpublished opinions / cases, herein this C
Defendants' arguments from such two cases "as" there are no good & legally frivolous

Furthermore, this Plaintiff avers & submits that, even if Defendants' arguments here
Circumstances of this case justify & require a different holding / result by this Court for, DC-AD
& DC-ADM #801 VI. M.8., both clearly state & require that, "Disciplinary Custody Status In
receive one (1) hour exercise per day, five (5) days per week and shall be permitted a minimum of three (3)
showers per week." And the words "will" & "shall" are mandatory language limiting the discret
create a liberty or property interest (or "entitlement"). See: Kentucky Dept. Corrections v. Thomp
490 U.S. 454, 460, 109 S. Ct. 1904 (1989); Sandin v. Conner, 515 U.S. 472, 115 S. Ct. 2293 (1995);
Olim v. Wakinekona, 461 U.S. 238, 244, 103 S. Ct. 1741 (1983); Meachum v. Fano, 427
U.S. 215, 226-27; Connecticut Board of Pardons v. Dumschat, 452 U.S. 458, 466-467, 101 S. Ct. 2460 (1981). The
limiting discretion is to use "explicit, mandatory language in connection with requiring substantive
Hewitt v. Helms, 459 U.S. 460, 472, 103 S. Ct. 864 (1983); accord, Kentucky Dept. of Corrections v. Thomp
490 U.S. 454, 463; Board of Pardons v. Allen, 482 U.S. 369, 374-80, 107 S. Ct. 2415 (1987). "Substantive pre
"Substantive limitations on official discretion," Olim v. Wakinekona, 461 U.S. ___, at 249; see also Toussaint
1089, 1097 n. 4 (6th Cir. 1986), cert. denied, 481 U.S. 1069 (1987); for further discussion of "substantive
Plain English this means: "When a

In Caldwell v. Miller, 790 F.2d 589 (7th Cir. 1986), the Seventh Circuit U.S. Ca
appeals, stated:

> An agency must conform its actions to the procedures that it has adopted. See Pearce v. Director, Office of Worker's Compensation, 647 F.2d 71 (9th Cir. 1981); Vanderpool v. Stetson, 571 F.2d 634 (D.C. Cir. 1977). See also Morton v. Ruiz, 415 U.S. 199, 235, 94 S.Ct. 1055, 1074, 39 L.Ed.2d 270 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures"); Vitarelli v. Seaton, 359 U.S. 535, 79 S.Ct. 968, 3 L.Ed.2d 1012 (1959); Service v. Dulles, 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d 1403 (1957). An inmate too, has the right to expect prison officials to follow its own policies and regulations. Anderson v. Smith, 751 F.2d 239 (8th Cir. 1983). Here the procedures placed substantial limits on the discretion of prison authorities to dispose of an inmate's confiscated personal property.

and the Defendants herein this instant case violated DC-ADM. #801-VI.D.8, when they illegally ab
this Plaintiff his shower on November 29, December 3, December 6, and December 13, 1999, d
other inmates in the RHU being too loud and disrupting the unit and this caused this Plaintiff to c
sores on my arms & legs from not being able to shower regularly & therefore they have violated m
prison policy and plaintiff's rights to expect them to follow such. Furthermore, the Plaintiff avers & submits
Federal Law mandates showers and outside exercise for punitive and administrative custody inmates. See B
v. Jeffes, 661 F.Supp. 895, 914-15 (1987). See also Jefferson v. Southworth, 447 F.Supp. 179, 191 (D.R.I.
1978) (showers every other day required in lockdown case), aff'd. sub nom. Palmigiano v. Garrahy, 616
598 (1st Cir.), cert. denied, 449 U.S. 839 (1980).

Defendants next claim & argue, that:

> Similarly, the denial of exercise on two occasions does not amount to the deprivation of life's necessities. Plaintiff does not claim that he was unable to exercise in his cell. He simply claims that he was not allowed to exercise outside (Complaint at 6).

However, Plaintiff avers & submits that, in Wilson v. Seiter, 501 U.S. 294, 111 S.Ct. 2321 (1991) (the U.S. Supreme Court stat

> Some conditions of confinement may establish an Eighth Amendment violation "in combination" when each would not do so alone, but only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth or exercise - - - - (Wilson, 111 S.Ct. at 2327).

Furthermore, Defendants' claim & argument, that, "Plaintiff does not claim that he was unable to exercise in his cell. He simply claims that he was not allowed to exercise outside." [6] is contrary to Federal law a Court to consider such has held that an inmate has an Eighth Amendment right to outside exercise where times are long and has furthermore specifically rejected prison officials arguments, time after time those case, that prevents a prisoner with exercise in his cell is insufficient. See for example, Davenport v. DeRo 844 F.2d 1310, 1315 (7th Cir. 1988) and cases cited, cert. denied, 488 U.S. 908 (1989); Ramos v. Lamm, 639 F.2d 559-60 (D. Utah 1980) and Farmer v. Carlson, 685 F.Supp. 1335, 1343 (M.D. Pa. 1988). In Davenport v. DeRo 844 F.2d at 1314, the U.S. Court of Appeals for the Seventh Circuit, stated & held:

> If lock-in times are long, it is irrelevant that prisoners can exercise in their cells; they are entitled to some relief from uninterrupted cell confinement.

and in the SCI-Camp Hill RHU lock-in times were long, (23 hrs. per day on Mon.-Fri. & 24 hrs. per day on Sat
See also Wolfolk v. Cuyler, 480 F.Supp. 1288, 1296, 1307 (E.D. Pa. 1979); Dolphin v. Manson, 626 F.Sup
240 (D. Conn. 1986); Wilson v. Seiter, 501 U.S. 294, 304-05, 111 S.Ct. 2321, 2327 (1991) (Exercise is one of the basic
needs that prison officials must provide for under the Eighth Amendment); Inmates of B-Block v. Yeates, 70 Pa. Cm
275, 470 A.2d 176, 178-80 (Pa. Commw. 1983), aff'd, 504 Pa. 506, 475 A.2d 743 (1984) and Spain v. Procunier, 600 F.2d
(4th Cir. 1979). See also 61 P.S. 310, as amended. Furthermore, DC-ADM. #801-VI. D-8, states & requires:

> Disciplinary custody status inmates will receive one (1) hour exercise per day, five (5) days per week, - - -

The above referenced prison policy directive contains mandatory language thus limiting the discretion of
officials, which the Defendants have clearly violated, herein, have in course violated Plaintiff's rights to exercise & to follow

[5] See Defendants' Memorandum in Support of Motion for Summary Judgment at 16.
[6] See also Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment at 16.

Defendants next claim & argue, that =
Plaintiff's claim regarding the temperature of his cell is equally deficient. The fact that he was sweating and uncomfortable does not constitute cruel and unusual punishment. As the Supreme Court noted in Rhodes, the constitution does not require comfortable prisons. (Rhodes, [17])

However, in reply to such, the plaintiff avers & submits that, such is both true & untrue. For while true that the Supreme Court noted in Rhodes, the Constitution does not require comfortable prisons, it is not that plaintiff's claim regard the temperature of his cell is equally deficient, as his claim here is more than just a claim that he was sweating and uncomfortable, as such is also a claim of excessive heat and it has long been held by the Federal courts that a prisoner may not be subjected to extreme changes in the temperature. See: Henderson v. DeRobertis, 940 F.2d 1055, 1059 (7th Cir. 1991); Eads v. Corley, 833 F.2d 52, 54 (5th Cir. 1987); Cassell v. Coughlin, 814 F.2d 825, 827 (2d Cir. 1988); Beck v. Lynaugh, 842 F.2d 759, 761 (5th Cir. 1988); French v. Owens, 777 F.2d at 1252-53; Lewis v. Lane, 816 F.2d 1165, 1171 (7th Cir. 1987); Lamm, 639 F.2d at 568-70; Reece v. Gragg, 650 F. Supp. 1297, 1304 (D. Kan. 1986); Gates v. McCall, at 1395-96, 1400; Monmouth County Correctional Institution Inmates v. Lanzaro, 595 F. Supp. 9; Wilson v. Seiter, 501 U.S. 294, 111 S. Ct. 2321 (1991). Also, several courts have held that inadequate ventilation violates the Eighth Amendment. See: Riley v. Owens, 719 F. Supp. 856, 871 (W.D. Mo. 1989); Williams v. White, 897 F.2d 942, 945 (8th Cir. 1990); Gillespie v. Crawford, 833 F.2d 47, 50 (5th Cir. 1987); Owens, 707 F.2d 1250, 1252-53 (11th Cir. 1983), cert. denied, 471 U.S. 817 (1985); Reece v. Gragg, 650 F. Supp. 1297, 1304 (D. Kan. 1986); Hoptowit v. Spellman, 753 F.2d 779, 784 (9th Cir. 1985); Inmates v. Barry, 717 F. Supp. 854, 866-67 (D.D.C. 1989); Ramos v. Lamm, 520 F. Supp. 1059, 1063 (D. and Ramos v. Lamm, 639 F.2d 559, 568-70 (10th Cir. 1980).

Furthermore, as to the claim concerning the placing of a plexiglass shield over the P cell door, on November 21, 1999, Defendants claim that such was done because the plaintiff was disrupting the cell Block, [18] but the one thing this answer cannot escape is the fact that on 1999, when the Plexiglass shield was placed over this plaintiff's RHU cell door that there written RHU, SCI-Camp Hill, nor DOC policy/procedure allowing for such to be done for yelling & disrupting the cell Block & such violates this Plaintiff's State & Federal Constitutional Freedom of Speech under Article I, § of the Pennsylvania State Constitution and and the First U.S. Constitution and Cruel and Harsh Punishment under Article I § 13 of the State and under the Eighth and Fourteenth Amendments of the U.S. Constitution, nor was there any legitimate penological placing the Plexiglass Shield over the Plaintiff's RHU cell door on November 21, 1999, nor for leaving

Furthermore, this Plaintiff significantly disputes Defendants' contention/claim that he disrupting the cell Block, on November 21, 1999, & the avers & submits that, he is part deaf in one ear, right ear, & that as a direct result of such medical condition/impairment, this Plaintiff talks real loud & furthermore, of significant collateral import here is the fact that Defendants have scintilla of record evidence, other than their own unsubstantiated contentions (which is not good enough standing all alone, to support their claim here that the plexiglass shield over the plaintiff's cell door, on November 21, 1999, because he was yelling & disrupting the Cell Block there was any RHU, SCI-Camp Hill and/or DOC written policy/procedure authorizing the placing of

[17] See Defendants' Memorandum in Support of Motion for Summary Judgment at 10.
[18] See Defendants' Statement of Undisputed Facts, at Paragraph No. 2

of Plaintiff's RHU cell Door for such reason, & thus, because there are two substantially different versions here as to this claim, which squarely & substantially conflict with each other which are the significant dispute, such creates a genuine issue of disputed material fact and requires a credibility determination by the fact-finder, which must, by law, be left to jury in this case to decide and choose between, under the controlling federal law, this Court may "not" legally grant the Defendants' Motion For summary Judgment herein case and must deny such, with prejudice, and schedule the case for trial by a jury.

Finally in sum on this, even if this Plaintiff has failed to establish claims upon which be granted under law (which he has "not") for Defendants' denials of his rights to shower and exercise and for Defendants' subjection of him to excessive heat/ventilation in his cell and for the placing of a plexiglass shield over his RHU cell Door, he "has" clearly established state prison, statutory & constitutional law violations/claims for each of such by the herein this case, and thus, Plaintiff's claims do "not" fail in all respects as a matter of law Action may "not" be legally dismissed by this Court, but "must" be scheduled for a trial by

B. Access To The Courts

In response to what the Defendants claim & argue on this, on pp. 10-11, of their Memorandum Support of Motion For Summary Judgment herein, the Plaintiff avers & submits that the case Lewis v. Casey, 518 U.S. 343, 116 S. Ct. 2174 (1996), was brought for inadequate prison law services. This case sub judice does "not" challenge prison law library services & there distinguishable from Lewis and Lewis does "not" apply to this here case, nor is Lewis law in this case, nor does Lewis require this Plaintiff's claims to be dismissed herein

Furthermore, while what Defendants claim Lewis v. Casey requires is true, such is just one way the actual harm or injury requirement can be met and that such is "not" exclusive the only way such can be met, and the nexus of the "actual injury" requirement of Lewis is such requires that the plaintiff show that "some" policy, program or practice of the prison prevented him from pursuing his claim/case in the courts and this requirement, this Plaintiff "has" clearly and herein this case, given what he alleges has been done by the Defendants in his Complaint and and Memoranda of Law in support of Motion For A Temporary Restraining Order And/Or Preliminary this case. Furthermore, of significant Judicial import here, is the fact that Lewis v. Casey did away with the requirement in Bounds v. Smith, 430 U.S. 817, 97 S. Ct. 1491 (1977), that prison Authorities assist inmates in the preparation and filing of meaningful legal papers with the courts. See Bounds,

Obviously, if prison authorities (the Defendants herein) deny this plaintiff access to/possession personal law books & legal papers/court case files necessary to enable him to prepare a pleading case, thus causing him to miss the court-ordered filing deadline for such, then that can cause the case. Prison Authorities (Defendants herein) have "not" met & complied with the constitutional requirement that they assist prisoners in the preparation & filing of meaningful legal papers with the courts. Plaintiff "has" shown an actual injury in being denied access to the courts under Lewis v. Casey, him to miss deadlines & to be unable to file court pleading(s) in this and also on his other which he otherwise would have filed therein such. See also Gentry v. Duckworth, 65 F.3d 1995)

Furthermore, eight years before the U.S. Supreme Court decided Lewis v. Casey, our

Plaintiff furthermore avers & submits that since 1969, it has been the law that ---
of prisoners to the courts for purposes of presenting their complaints may not be denied
obstructed. Johnson v. Avery, 393 U.S. 483, 485, 89 S.Ct. 747, 21 L.Ed.2d 718, 721 (1969)
It was recognized in Johnson, 393 U.S., at 487, 21 L.Ed.2d at 722 = "For all practical
pf.---- prisoner cannot have the assistance of an adequate law library, their possibly
constitutional claims will never be heard in any court!! Likewise, herein this instant
the same can be said when Defendants denied this Plaintiff access to/possession
his own personal softcover law books & legal materials in the SCI-Camp Hill RHU,
in the Complaints in this case.

Litigation itself is a form of expression protected by the First Amendment
Supreme Court has stressed litigation may be a vehicle for effective political expression and
as well as a means of communicating useful information to the public. When the plaintiff
not permitted to have any of his own personal softcover law books & all of his
materials & court case files in his cell in the SCI-Camp Hill RHU & he was denied
his stored property in the RHU, as stated & set forth in the Complaints in this case
& is no way that he could adequately and/or effectively participate in his rights to lit

Furthermore, such has the potentially harmful effect of causing this Plaintiff
court's filing deadline(s)/due date(s) for the filing of his Motions, Briefs, Reply Briefs, etc.,
Courts in his various active/2 State & Federal Court(s) civil actions & appeals a
state criminal case and, in fact, "has" already done so.

Prison officials may not deny an inmate access to the courts and
retaliate against him for exercising that right. Rizzo v. Dawson, 778 F.2d
1985); Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974)
Avery, supra.

Right of access to the courts is derived from the due process clause, pri
immunities clause, and the First Amendment. Simmons v. Dickhaut, 804 F.2d 182 (1st
allegation of intentional violation of right of access to the courts states a cause of action
which prohibits deprivation of federal statutory or constitutional rights under color of st

"The right of access is a discrete, constitutional right, derived from various constitution
in part from the due process clause, Chambers v. Baltimore & Ohio Rail Road, 207 U.S. 142, 148, 28
2143 (1907) and the First Amendment, California Motor Transportation Company v. Trucking Un
508, 513, 92 S.Ct. 609, 613, 30 L.Ed.2d 642 (1972). See also Ryland v. Shapiro, 708 F.2
(5th Cir. 1983). The right of access is fundamental. Bounds v. Smith, 430 U.S. 817, 82
(1977). It follows logically that the allegation of intentional violation of right of acce
states a cause of action under § 1983. In Bounds v. Smith, supra, the U.S. Supreme
prison officials must "assist inmates in the preparation and filing of
meaningful legal papers ----" (Bounds, 430 U.S. at 828, 97 S.Ct. 1491 (1977)

By the facts, actions & conduct in the case at hand, the Defendants h

extensions of time in other cases of his, which he otherwise would
have filed for & which thus caused delay therein & thereby interfering w
delaying & denying him his rights under the 1st & 14th Amendments US Const
to have "adequate", "effective" & "meaningful" access to the courts & defend
"have" done so deliberately & intentionally, herein. Furthermore, see: Wright v
798 F.2d 984, 988 (11th Cir. 1986); Storms v. Brown, 416 F.2d 105, 107 (7th Cir. 1969); Pro
Prewitt, 789 F.2d 307, 310, 311 (5th Cir. 1986); Morello v. James, 627 F. Supp. 1571, 15
1986); Artillery v. Owens, 719 F. Supp. 1256, 1283, 1284 (M.D. Pa. 1989); Reuter v. Dahm
1121, 1130 (D. Neb. 1989); Toussaint v. McCarthy, 801 F.2d 1080, 1108-10 (9th Cir. 1986);
981 F.2d 694 (3d Cir. 1992) and Sowell v. Vose, 941 F.2d 32, 34-35 (1st Cir. 1991).
v. Carlson, 652 F.2d 371, 374 (3d Cir. 1981) (right of access "must be freely exer
without hindrance or fear of retaliation"). Furthermore, it was stated/held in
Hauck, 452 F.2d 1071-72 (5th Cir. 1971), that:

> Access to the courts is a fundamental precept of our legal system of government. No citizen, regardless of his transgressions is to be legally consigned to the total and unreviewed power of any branch of government. To make the system work, to maintain the proper checks and the proper balance, no person subject to the power of government can be denied communication with or access to any of the three spheres of governmental authority. This principle serves the highest governmental as it serves the needs of the individual. (Andrade, 452 F.2d at 1071-72

Furthermore, it has been held that, "Mere presence of a law library [in a prison] cannot exercise their rights. See: Ruiz v. Estelle, 503 F. Supp. 1265

Furthermore on this, the Plaintiff avers & submits that seizure or destruction of legal papers may violate the constitution. See: Brownlee v. Conine, 957 (7th Cir. 1992); Roman v. Jeffes, 904 F.2d 192, 198 (3d Cir. 1990); Morello v. James, 810 F.2d 1987); Simmons v. Dickhaut, 804 F.2d 182, 185-86 (1st Cir. 1986); Wright v. New 968 (11th Cir. 1986); Atherton v. Monitors, 717 F.2d 284, 288 (6th Cir. 1983); Tyler v. 643, 644 (8th Cir. 1979); Williams v. ICC Committee, 812 F. Supp. 1029, 1032-33; Gallipeau v. Beard, 734 F. Supp. 48, 53 (D. R.I. 1990); Balabon v. Scully, 606 F.2d 1989); Shinger v. Thompson, 537 F. Supp. 133, 137 (N.D. Ill. 1982); Sipe v. Bo F. Supp. 1264, 1265 (N.D. W. Va. 1981); Carter v. Hutto, 781 F.2d 1028, 103 (claim stated when prisoner alleged prison officials confiscated materials); Procunier v. Martinez, 416 U.S. 396, 94 S. Ct. 1800 (1974) (a pri right of access to courts prison staff confiscate his legal materials or otherwise interfere with any communication between the prisoner an

> prison officials cannot deny a prisoner his legal research, potentially

paperwork in an area beyond prisoner control violates the case's

and agency, including the following: challenging the legality of their conviction or con
seeking redress for illegal conditions or treatment while under correctional cont
pursuing remedies in connection with civil legal problems, and asserting claims
correctional or other governmental authority any other right protected by Constitu
or statutory provisions or common law. Inmates seeking judicial relief are subje
to reprisals or penalties because of the decision to seek relief.

Court access enters the picture through the First Amendment when officials
ability to have the materials necessary to comprehend the transcript, err
records of one's criminal conviction. Transcripts and evidence are not gener
specific to each conviction. Errors in one case may not appear in the next. Thus, prison
cannot deny an inmate his legal research, scientific or otherwise, when that may
only chance for freedom is "in the books" through the courts.

Finally on this, even if the plaintiff fails to establish a federal claim for Defendants
confiscation/denial of his own personal soft cover lawbooks & legal materials and for their viol
of plaintiff's 1st & 14th Amendment, U.S. Constitutional Rights to have "adequate" "effective" and "mean
access to the courts (which he does "not"), he still "has" established claims for such
Pa. State Prison Policy Directives & other Pa. State Constitutional Laws, as DC-ADM. #801 VI. D. 5. &

- Disciplinary custody status inmates will be permitted legal materials that may be contained in one (1) records center box. Any additional legal material will be stored and made available upon request on an even exchange basis...

and as DC-ADM. #801 VI. M. 5. states:

DC status inmates will be permitted to retain religious as well as legal materials that may be contained in one (1) records center box. Any additional legal or religious materials will be stored and made available upon request on an even exchange basis not more than once every 30 days unless approved by Legal.

both of these above-listed prison policy directives contain mandatory language limiting the d
prison officials/the defendants, herein, and as Article I, § 1 of the Pa. State Constitution, s

All men are born equally free and independent and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

and as Article I, § 20 of the Pa. State Constitution, states,

The citizens have a right in a peaceable manner to assemble together for their common good, or to apply to those invested with the power of government for redress of grievances or other proper purposes, by petition, address or remonstrance.

and as Article I, § 26 of the Pa. State Constitution, states:

Neither the commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

and as the Defendants, herein, "have" violated all of the above, by their acts, actions and omissi
in the Complaints herein this civil rights action, which is why this action may "not" legally be
complaint is the prison policy directive in effect at the relevant date/times herein. Nov
prison policy directive in effect at the relevant date/times herein. Article

by this court, but must be scheduled for a jury trial.

Defendants, first of all, claim & argue, on this, that: Plaintiff asserts that on two isolated occasions he was denied religious materials. He asserts that from December 1 through December, 1999, that he was denied unidentified religious materials (complaint, 16, 17). He also claims that at the end of April, 2000, his bible was not returned to him after the staple swallowing incident (supplemental complaint, 10). Neither assertion states a claim under the First Amendment.[23]

However, by way of reply to the above, the plaintiff avers & submits that such claim is true and untrue, as it is untrue and Defendants lie when they state that plaintiff asserts that on two isolated occasions he was denied religious materials. He asserts that from December 1 through December 1999, that he was denied unidentified religious materials (complaint, 16, 17)" as nowhere in his initial Complaint does this plaintiff assert that on two occasions he was denied religious materials, nor does he assert anywhere in his complaint, that from December 1 through December 1999, that he was denied unidentified religious materials, however, what he does assert in his initial Complaint, herein this case, here at "on December 1, 1999, and December 4, 1999, this Plaintiff attempted to inform Defendant Lt. Rhoades of his being illegally denied his religious literature/materials, but Defendant Lt. Rhoades refused to listen to and/or discuss the matter of the denial of his religious materials with C. Palakovich, reminded him of DOC Policy DC-ADM. #801-2, on such, and verbally asked the RHU staff to give me my religious materials,[25] however, nowhere in his initial complaint does this plaintiff assert that from December 1 through December, 1999, that he was denied religious materials, in fact, the plaintiff does not ever state the exact date(s) as to when denied his religious materials on, nor for how long he was denied such for in his initial complaint case.[26] however, it is true that he also claims that at the end of April, 2000, his bible and religious materials was not returned to him after the staple swallowing incident and neither assertion states a claim under the First Amendment as based upon that set forth herein, as well as that initial complaint at paragraph No's. 16-19, & based upon that set forth in his supplemental complaint at 16-a" plaintiff avers & submits that he has stated claims under the 1st Amendment on this, & thus the "not" entitled to judgment as a matter of law on this claim, herein.

Defendants next claim & argue, on this, that:

Moreover, the courts have recognized the legitimacy of restricting religious material in materials in matter may retain while housed in the HRU Access, 1984 F. Supp. 6 (E.D. Pa. 1984). The plaintiff avers & submits that, once again here, the Defendants however, in reply to the above, the plaintiff avers that a copy of the courts unpublished decision in Access v. Kirkland attach to their memorandum, my copy of the courts unpublished decision in Access v. Kirkland of this court, therefore, as a consequence, they are not entitled to use/rely upon Access v. Kirkland legally consider such case herein this case and as Defendants cite no other cases in support of their must fact-

[23] See Defendants' Memorandum In Support Of Motion for Summary Judgment at paragraph No. 16.

[24] See Plaintiff's initial complaint, at Paragraph No. 16.

[25] See Id., at Paragraph No. 10.

[26] Although he does not state such in his initial complaint herein, the actual date he was denied was from November 26, 1999 — January 30, 2000.

Defendants next claim & argue on this, that:

In this case, the evidence shows that plaintiff was limited to one box of materials and a personal Bible while housed in the RHU (Livingood Dec., ¶¶4, Ex. 4, Ex. 5). Moreover, he could exchange these materials periodically on an even basis for others materials he maintained in storage (Id.). In addition, the record shows that as of November 26 he had a personal Bible in his cell (Livingood Dec. ¶¶4, 6, Ex. 6). Thus even though he may not have had religious materials, he did not suffer a violation of his First Amendment rights.

However, in reply to such, the plaintiff states that while he was limited to one box of materials & a personal Bible while housed in the RHU from November 26, 1999 - January 30, 2000, the materials he could exchange these materials periodically on an even basis [redacted] for other materials he maintained in storage" to here) "were" legal materials, "IT IS" untrue & Defendants "lie" when they claim that Defendants have not submitted one scintilla of record evidence here showing that any DOC/SCI-Camp Policy allowed an RHU inmate to exchange his Bible or equivalent religious publication for other materials during the relevant time period in question here from November 26, 1999 - January 30, 2000, and in fact, this very same DC-ADM #801 Inmate Disciplinary And Restricted Housing Unit Procedures Directive which Defendants have submitted, herein, as exhibits to Documents supporting Defendants' Motion For Summary Judgment (DC-ADM #801) specifically states only legal materials can be exchanged on an even basis and such proves Defendants are "lying" in a deliberate & malicious attempt to mislead this Court & commit fraud here on this, and second of all, Defendants' claim & argument that, "thus even though he may not have had other religious materials, he did not suffer a violation of his First Amendment rights" is clearly contrary to federal law, as such denies plaintiff his rights to fully practice religion (christianity), as such denied him his religious study booklets, his Strong's concordance of the Bible & his Bible Dictionary, which he uses for his religious study to learn & gather further information on different subjects/topics of the Bible & to enhance his knowledge & beliefs of the tenets of his religion, and as such further denied plaintiff his Daily Guide posts 2000 Book, this plaintiff which he uses for his meditation & Devotional time with God and that a religious study and Devotional/Meditation time is the foundation of his Religious Beliefs and that without such Strong's Exhaustive Concordance Dictionary, Discovery Series Bible Study Booklets and Daily Guide posts 2000 Book plaintiff has no religious study/Devotional Materials & was unable to have unconstitutionally denied his daily religious study/Meditation/Devotional, a violation of the tenets of his religious beliefs from 11-26-99 - violation of his 1st & 14th Amendment, U.S. Constitutional Rights to freely practice religion of his choice and such also ignored & violated the mandates of DC-ADM #801 - 2 & his Rights under Article I, §§1 & 3 of the Pa. Constitution.

Furthermore, requiring plaintiff to only be able to have one religious book or other equivalent publication to fully practice his religion, would be & is giving a Law School student only one Law Book, lets say, the Federal Constitution, when he needs to have all of the information/knowledge he needs to know to graduate

Furthermore, on this, see: Mukmuk v. Commissioner of Department, 529 F.2d 272 (1976); Long v. Parker, 390 F.2d 816 (3d Cir. 1968) and Walker v. Blackwell, 411 F.2d 23 (5th Cir.

Defendants finally claim and argue, on this, that:

> Likewise, the record shows that at the end of April, 2000 materials were removed from his cell because he attempted suicide by swallowing staples (Supplemental Complaint ¶ 4). Some of his materials were returned to him before the month ended. The rest of his materials were returned in early May (Levingood Dec. ¶ 25, 27, Ex. 7.) In light of the circumstances, the relatively brief deprivation of his materials did not amount to a First Amendment violation. 30/

However, in reply to the above, this Plaintiff avers & submits that, first of all, that w
it is true that the records show that at the end of April, 2000, materials were remov
cell because he attempted suicide by swallowing staples and that some of his materi
returned to him before the month ended, it is [illegible] on true & Defendants "lie" when they
that others were returned in early May, 31/ the other materials which were remov
the Plaintiff's B2-57 cell on early April 24, 2000 were "not" returned to this Plai
2000, 32/ and, it is "also on true that in light of the circumstances, the relatively
deprivation of his materials did not amount to a First Amendment violation, gi
facts alleged in this plaintiff's initial and supplemental complaints, herein this case,
given the nature of the violation alleged and that, as a matter of law, the contin
deprivation of constitutional rights constitutes irreparable harm, see Elrod v. Burns, 427
U.S. 347, 373, 96 S. Ct. 2673 (1976) and Deerfield Medical Center v. City of Deerf
Beach, 661 F.2d 328, 338 (5th Cir. 1981); and, given the fact that this is alle
Defendants here ignored the facts that Defendants Rubendall & Rager deliberately
maliciously ignored & disobeyed the orders of Drs. Lasky and Clark and also of th
Superiors, Defendants Palakovich & Dragovich & three different Lieutenants to
all of my property that was taken from my RHU cell on April 24, 2000, back to
me for 18 days and this Defendants Rubendall & Rager had no authority to do a

Furthermore, this Plaintiff avers & submits that, Defendants' Claims &
page: -12- of their Memorandum In Support Of Motion For Summary Judgment ignored
fact that Defendants were required by their own DC-ADM. #801-2, Prison Policy t
permitted the plaintiff to have other religious materials, besides just a Bible, whi
contained in one record center box & this the Defendant could not do for allow this
to have from November 6, 1999, — January 30, 2000, & that, Defendants violated the
mandatory prison policy (DC-ADM. #801-2) and this Plaintiff's rights under Federal laws
them to follow such.

Furthermore, here on this, even if this Plaintiff has failed to establish a First
violation here on this claim (which he has not so failed) this action still should not be dism
he has established a violation of state law on the Pendent State Law claims of his
herein, under Article I, §§ 1, 3 & 26 of the Pa. State constitution and under DC-ADM. #801-2
Pa. M.S., and under Title 37 Pa. Code § 93.6, based upon that which he has set forth
and therein Plaintiff's Initial, Amended & Supplemental Complaints, herein this instant civil
30/ See Defendants' Memorandum In Support of Motion For Summary Judgment, at
31/ The material which was returned to Plaintiff by Defendant Rager in early May (my 2000) w

Again, herein this case sub judice, on one hand, the Plaintiff claims th on November 26, 1999, he was denied his religious materials other than Bible from his personal property boxes because Defendant Lt. Rhoades told Property officer Charlie Craig and RHU 6-2 Shift Sgt. Ryles not to give Plaintiff such other religious materials; that, Plaintiff therefore did not ha the opportunity to get such religious materials other than a Bible from h personal property boxes on November 26, 1999; and that Plaintiff continu to be denied his religious materials other than a Bible from November 26, 1999 — January 30, 2000.[33] On the other hand, the Defendants claim & deny that Def Lt. Rhoades ordered RHU Property officer Charlie Craig and/or RHU Sgt. Ryles n give the Plaintiff his religious materials (other than a Bible) from his Property B in the RHU Property Room;[34] that, Plaintiff had the opportunity to obtain the books;[35] and that, the Plaintiff was not denied his all personal religious mat in the RHU from November 26, 1999, — January 6, 2000.[36]

Also, herein this case sub judice, on the one hand, the Plaintiff claimed Defendant RHU Property Officer Rubendall disobeyed the April 27, 2000 Order of Dr. Clark this Plaintiff be given back all of his legal property, religious property and his oth property from his RHU B2-57 cell on the next day (April 28, 2000);[37] and that, Def RHU Property officer Rager disobeyed the May 2 & 3, 2000, orders of Defendant Dragovich and Polakovich to immediately give this Plaintiff the remainder of his legal, religious & other property which had been taken from his RHU B2-57 cell.[38] On the other hand, the Defendants deny such.[39] Because there are substantially different versions here as to these religious freedom rights claims which severely & substantially conflict with each other and which are in significant di such create genuine issues of disputed material facts and requires a credibility deter by the fact-finder which must, by law, be left to the jury herein this instant c to decide & choose between conflicting [redacted] inferences from the basic facts a and therefore, under the controlling federal law, this Court may not legally grant Defendants' Motion For Summary Judgement on the Plaintiff's denial of religious materials claims in this case, and must deny such, with prejudi and schedule this case for trial by a jury.

33/ See the Affidavit of Plaintiff Shon Richard Tice at Para. No's. 2 & 12, attached as Exhibit - F - of the Appendix of Exhibits to Plaintiff's Brief In Opposition To Defendants' Motion For Sum Judgment And Memorandum In Support.

34/ See Defendants' Response to Interrogatory No. 3 of Plaintiff's Second Set of Interrogatories attached as Exhibit - D - of the Appendix of Exhibits to Plaintiff's Brief In Opposition To Defendants' Motion For Summary Judgment And Memorandum In Support.

35/ See Defendants' Response to Interrogatory No. 23 of Plaintiff's First Set of Interrogatories attached as Exhibit - E - of the Appendix of Exhibits to Plaintiff's Brief In Opposition To Defendants' Motion For Summary Judgment And Memorandum In Support.

36/ See Defendants' Response to No. 2 of Plaintiff's Request For Admissions attached as Exhibit - E - 3 - of the Appendix of Exhibits to Plaintiff's Brief In Opposition To Defendants' Motion For Summary Judgment And Memorandum In Support.

37/ See Paragraph No. 10 [redacted] of the Plaintiff's Supplemental Complaint on file herein this ca

38/ See Paragraph No. 14 of the Plaintiff's Supplemental Complaint on file herein this ca

39/ See paragraph No's. 10 & 14 of Defendants' Answer To Plaintiff's Supplemen Complaint, attached as Exhibit - B - to the Appendix of Exhibits To Plaint Brief In Opposition To Defendants' Motion For Summary Judgment And Memorandum In Suppo

C. PLAINTIFF'S STATE LAW CLAIMS ARE "NOT" BARRED BY THE ELEVENTH AMENDMENT AND STATE LAW SOVEREIGN IMMUNITY.

Defendants claim & argue, that:
Plaintiff's state law claims for injunctive relief are barred by the Eleventh Amendment and his state law claims for damages are barred by state law sovereign immunity. (6)

However in reply to such, this Plaintiff avers & argues that, the Defendants' claim/argument that [illegible] state law claims for injunctive relief are barred by the Eleventh Amendment, is "moot, as this Court has already denied Plaintiff's Motion for a Temporary Restraining Order And/or An Expedited Preliminary Injunction on November 21, 2000, and his State law claims for damages are "not" barred by state law Sovereign Immunity, as state law sovereign immunity defense is "not" applicable and cannot legally be applied/used, herein this case, given & based upon the following arguments & citations of authority:

In Hafer v. Melo, 502 U.S. 21 112 S.Ct. 358 (1991), the U.S. Supreme Court stated & held:

In Kentucky v. Graham, 473 U.S. 159, 105 S.Ct. 3099, 87 L.Ed. 2d 114 (1985) the court sought to eliminate lingering confusion about the distinction between personal-and official-capacity suits. We emphasized that official-capacity suits "generally represent another way of pleading an action against an entity of which an officer is an agent." Id. at 165, 105 S.Ct. at 3105 (quoting Monell v. New York City Dept. of Social Services, 436 U.S. 658, 690 n. 55, 98 S.Ct. 2018, 2035 n. 55, 56 L.Ed. 2d 611 (1978)). Suits against state officials in their official capacity therefore should be treated as suits against the state. 473 U.S. at 166, 105 S.Ct. at 3105. Indeed when official is sued in his official capacity in Federal court, the officer's successor automatically assumes his role in the litigation. See Fed. Rule Civ. Proc. 25(d)(1); Fed. Rule App. Proc. 43(c)(1); this Court's Rule 33. Because the real party in interest in an official-capacity suit is the government entity and not the named official, the entity's "policy or custom" must have played a part in the violation of federal law." Graham, supra at 166, 105 S.Ct. at 3105 (quoting Monell, supra, 436 U.S. at 694, 98 S.Ct. at 2037). For the same reason, the only immunities available to the defendant in an official-capacity action are those that the governmental entity possesses. 473 U.S. at 167, 105 S.Ct. at 3105. Personal capacity suits, on the other hand, seek to impose individual liability upon a government officer for actions taken under color of state law. Thus, "[o]n the merits, to establish personal liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." Id. at 166, 105 S.Ct. at 3105. (Hafer, 112 S.Ct. at 361-362).

See also Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683 (1974).

Herein this case sub judice, the Plaintiff has sued each of the Defendants named in their (personal) capacities.

Furthermore, in Howlett v. Rose, 496 U.S. 356, 110 S.Ct. 2430 (1990), the U.S. Supreme Court stated:

But as to persons Congress subjected to liability, individual states may not exempt such persons from federal liability by enacting a different law contrary thereto. If we were to uphold the immunity claim in this case, every state would have the opportunity to extend the mantle of sovereign immunity to all persons who would otherwise be subject to § 1983 liability. States would be free to nullify for themselves the legislative decisions that Congress has made on behalf of all the people. (Howlett, 110 S.Ct. at 2436).

Finally, the Plaintiff avers & submits that, Defendants' sovereign immunity also violates the federal law that gives federal courts jurisdiction over pendent claims and such state immunity law, [redacted] (Pa.C.S. §8510), would improperly divest federal court of the supplemental jurisdiction, which the U.S. Congress to hear pendent state law claims, something no state statute has the legislative to do.

For the foregoing reasons/citations of authorities, Defendants'

II. PLAINTIFF'S FURTHER/OTHER ARGUMENTS

Plaintiff avers/submits that, there remains substantial dispute over the claims herein this instant Civil Rights Action & the Defendants herein, have d that they/denied Plaintiff his own personal soft cover law books, his legitima his religious materials, 4x/showers, 4x/outside exercise/yard, and that it was not that there was poor ventilation in the Plaintiff's RHU cell; 4x/& furthermo there remains substantial dispute over the material facts herein this instant Civil action over why the Plexiglass shield was placed over the Plaintiff's cell Door, with t Defendants claiming/arguing that such was done in order to prevent Plaintiff and disrupting th Block with his yelling, 4x/& with the Plaintiff claiming/arguing that such was done in retalia him exercising his First Amendment Rights to Freedom of Speech, 4x/and that he was not yelli Nevertheless, 4x/whether Defendants' actions were justified or not under the circumstance present. Furthermore, Defendants & the Plaintiff have presented conflicting evidence/testimon above-genuine issues of disputed material facts. Furthermore, the Plaintiff has right to have the jury determine whether the Defendants denied him his own personal books/legal materials and religious books/materials and whether the Defendants den him showers and outside exercise yard and whether it was hot in the Plaintiff's RHU Cell in November & December, 1999, and whether there was poor ventilation in the Plaintiff's RHU Cell and what was the reason why the Plexiglass shield was placed over the Plaintiff's RHU Cell Door; a Whether the Plaintiff was actually yelling and disrupting the Cell Block on November 24, 1999, and as the foregoing facts & claims all present questions of genuine issues of disputed material facts which cur factual & credibility determinations to be made by the Fact Finder (Jury) at the Jury Trial herein, and there are legally entitled to have the Jury choose between conflicting inferences from basic facts, see Defendants' Answer To Complaint and Amended Complaint at Para. No. 6, Defendants' Answers To Plaintiff's First Set of Interrogatories, Answers To Interrogatory Nos. 4 & 20, & Defendants' Answer To Plaintiff's Request For Admissions, at Para. No. 7, 10 & 13, See Defendants' Answer To Supplemental Complaint at Para. Nos. 2, 3, Para. No. 1 & 2, See Defendants' Answer To Complaint and Amended Complaint at P. 3, Para. No. 6, Defendants' Answers To Plaintiff's First Set of Interrogatories, Answer To Interrogatory No. 3, and Defendants' Answers To Supplemental Complaint, at Para. Nos. 7, 10 & 11, Defendants' Answers To Plaintiff's First Set of Interrogatories, Answer To Interrogatory No. 23, and Defendants' Answers To Plaintiff's Request For Admissions, at Para. No. 4, See Defendants' Answer To Complaint and Amended Complaint, at P. 3, Para. No. Defendants' Answer To Plaintiff's Request For Admissions, at Para. No. 6, See Defendants' Answer To Complaint and Amended Complaint at P. 3, Para. No. Defendants' Answer To Plaintiff's Request For Admissions, at Para. No. 6, See Defendants' Answer To Complaint and Amended Complaint at P. 3, Para. No. 6, Defendants' Answers To Plaintiff's First Set of Interrogatories, Answer To Interrogatory No. 19, and Defendants' Answers To Plaintiff's Request For Admissions, at Para. No. 4, See Plaintiff's Complaint, at Para. No. 24.

49/ See P.S.U.P.S. herein

therefore, summary judgment would be ~~it is~~ improper, in this case, given the
herein, & given that set forth in the complaints & other pleadings of this
& as this Plaintiff has requested a jury trial herein, and said jury could
should return a verdict in favor of the Plaintiff on all issues & claims
claims, herein, as such would be ~~it is~~ required by & under the applicable controlling of
Federal & Pa. State Law(s), Defendants' Motion For Summary Judgment must as a matter of law be denied with prejudice
this case.

III. CONCLUSION

Here in this instant Civil Rights Action sub judice, the Statement of Ma
Issues of disputed material facts, this Plaintiff's Arguments & Claims as set
forth herein this Brief In Opposition To Defendants' Motion For Summary Judg
And Memorandum In support; Plaintiff's Exhibits in the Appendix of Exhibits
Brief In Opposition To Defendants' Motion For Summary Judgment And Memo
In support; Plaintiff's Declaration In opposition To Defendants' Motion For Summ
Judgment and Defendants' Statement of Undisputed Facts; Plaintiff's First
second set of Interrogatories and Defendants' Responses To Plaintiff's First & Second Set of Interrog
Plaintiff's Request For Admissions and Defendants' Response and Supplemental Response To Plaintiff
For Admissions, Plaintiff's Initial, Amended and Supplemental Complaints &
other pleadings of this case, all show that within the limited abilities of a Pro
Plaintiff, Plaintiff John Richard Jae ~~has~~ has clearly & sufficiently shown &
demonstrated that Defendants' claims and Arguments are specious, ludicrous, un
& factually & legally frivolous & are nothing more that a smoke screen with w
Defendants hope to obfuscate the real issues, herein, and that Defendants
~~not~~ entitled to judgment as a matter of law, herein this case, as the credibility
of the parties remains an issue, herein, as there still remains genuine issues
of disputed material facts, which will require factual and credibility determinations
be made by the Fact-Finder (the Jury) at the Trial, herein, that the Defendants
the Plaintiff have presented conflicting Evidence, herein; that the parties a
legally entitled to have the Jury choose between conflicting inferences
from basic facts, herein, & that said Jury could & should return a verdict in fav
of this Plaintiff on all issues & claims, herein, as such would be ~~it is~~ required
by & under the controlling & other Federal & Pa. State Law(s) & that, therefore, herein
of fundamental fairness & judicial harmony & economy require that this Court
deny, with prejudice, Defendants' Motion For Summary Judgment, herein this case s
Justice & allow this case to proceed to & by fully developed at the Jury Trial, herein, for
Grant Defendants' Summary Judgment Motion in this case would constitute an abuse of this Court's Judicial Authority & Discr

would also be contrary to & violate the controlling & other Federal & Pa. State
Law(s) and would unconstitutionally deny this Plaintiff his Rights & the Laws under
Seventh Amendment of the United States Constitution to have a
herein this case.

This here Brief of this Plaintiff is Supported By the Following Below Listed D

A. Defendants' Answer To Complaint And Amended Complaint.
B. Defendants' Answer To Supplemental Complaint.
C. Plaintiff's First Set Of Interrogatories And Defendants' Response And Supplemental Response T
D. Plaintiff's Second Set Of Interrogatories And Defendants' Response Thereto.
E. Plaintiff's Request For Admissions And Defendants' Response And Supplemental Res
F. Affidavit of Plaintiff John Richard Jae.
G. Plaintiff's Statement of Disputed Material Facts.
H. Plaintiff's Declaration In Opposition To Defendants' Motion For Summary Judgm
Defendants' Statement of Undisputed Facts.
I. The RHU Property Officer's Notes on Property For Plaintiff John Richard
J. Plaintiff's 12-08-99 Official Inmate Grievance Concerning The Claims of Denial of Plaintiff
Material, Showers, Yard, Outside Exercise & The Plexiglass Shield / Excessive Heat / Broken
and The Grievance Coordinator's 12-08-99 Rejection Form Letter on Such Grie
K. Plaintiff's Official Inmate Grievance of May 8, 2000, Against Defendants Rubendall &
Denial of Plaintiff Property and the August 11, 2000, and September, 2000, Decisions on Ap
L. Plaintiff's 11-28-01 Inmate Request To Staff Committee Program Review Committee And The 12-1
M. Plaintiff's 11-30-99 Letter to Executive Deputy Secretary Beard & the December 9, 1999, Reply
N. Plaintiff's 5-21-00 Letter to Defendant Dragovich and Defendant Dragovich's 5-24-00 Reply
O. The relevant portions of DC-ADM. #801, DC-ADM. #801-A and DC-ADM
Complaints and other Pleadings in this case, all of which are
now hereby incorporated herein by Reference hereunto the same as though each such were set forth

IV. RELIEF REQUESTED.

(W) HEREFORE, the Defendants' Motion For Summary Judgment should, as a
be denied, with prejudice, herein this case, and this case should be tested
By a Jury.

RESPECTFULLY SUBMITTED,

(S) John Richard Jae
MR. JOHN RICHARD JAE
#BQ-3219
SCI-Greene/SMU
175 Progress Drive
Waynesburg, PA. 15370

DATED: 29th OCTOBER 2001.

Certificate of Service

I Certify that on this 25th day of October, 2001, I mailed the person listed below, a true & correct copy of the within Plaintiff's Brief In Opposition To Defendants' motion For Summary Judgment And Memorandum In Support and Appendix of Exhibits by way of U.S. 1st Class mail postage Prepaid & addressed to:

MR. Michael L. Harvey, SDAG
Office of the Attorney General
15th Floor — Strawberry Square
Harrisburg, PA. 17120

I Certify that on 10/25/01 I gave to Prison Official hereinmailing to the Court, the originals of the above same documents:

Signed under penalty of perjury at Waynesburgh, Pennsylvania on this 25th day of October, 2001:

(S) John Richard Jae
MR. JOHN RICHARD JAE
Plaintiff and Pro Se Counsel